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COMMENTS

CONSTITUTIONAL LAW—FREEDOM OF ASSEMBLY—CONVICTIONS OF CIVIL RIGHTS DEMONSTRATORS FOR TRESPASS UPHELD*

The inevitable conflict between the fundamental individual freedoms of free speech and assembly and the power of government to keep the peace and to protect the interest of a civilized community has given rise to a “living branch” of the law. The law in this field has not ended its development by evolving into a static set of rules. Conversely, the law remains, as it must, in a state of flexibility through which it can adapt to the many variations of the conflict between the right to disseminate ideas in public places and the power of government to regulate in the interest of its citizens. The problem has proved as persistent as it is perplexing, and it has fallen the lot of the courts to weigh in the balance the circumstances underlying and the reasons for the regulation of the first amendment rights. In the case of Adderley v. Florida, the Supreme Court again undertook this delicate and difficult task.

In Adderley the petitioners, Florida A. & M. University students, “demonstrated” at the county jail against policies of racial segregation and the previous arrest of fellow students. The petitioners did not leave the jail house grounds after being told by the county sheriff that those remaining would be arrested. The petitioners were arrested and convicted on a charge of “trespass with a malicious and mischievous intent.” On appeal the convictions were affirmed by the Florida Circuit Court and then by the Florida District Court of Appeals.

The United States Supreme Court, affirming, held that the trespass statute did not come within the constitutional prohibition of vagueness and that, in light of the facts, the arrest and conviction of the petitioners under it did not deprive them of

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2. “Every trespass upon the property of another, committed with a malicious and mischievous intent, the punishment of which is not specially provided for, shall be punishment by imprisonment not exceeding three months, or by fine not exceeding one hundred dollars.” FLA. STAT. § 821.18, F.S.A. (1965).
3. Adderley v. State, 175 So. 2d 249 (Fla. 1965).
their constitutional rights to freedom of speech, press, assembly and petition.\(^4\)

The task of balancing the first amendment freedoms against governmental authority, undertaken by the Court in *Adderley*, was not an unfamiliar one. For years the legislatures, local authorities and the courts have grappled with the problem, and the decisions in this field have grown into a veritable forest. Since legislative and administrative bodies must adapt their policies to the decisions of the Court, a "cruise of the timber"\(^5\) is necessary to appreciate the Supreme Court's resolution of the issue in *Adderley*.

The fourteenth amendment has long been recognized as the protector of the first amendment freedoms of speech, press and assembly against state encroachment.\(^6\) However, the question of when, and to what degree, the state may regulate the opportunity to exercise these rights still presents a very real problem. The Court's decisions, although they seldom produce concrete answers, can provide guidelines.

In one category of cases the balancing test is easily applied. In these cases free dissemination of ideas in public is placed above the interest of a state or municipality in keeping its streets clean. In *Hague v. CIO*\(^7\) an ordinance was held void on its face because it provided for prior administrative censorship of the exercise of the right of speech and assembly in public places. The Court in *Schneider v. Irvington*\(^8\) acknowledged that municipal authorities have a duty to keep streets open and uncluttered and, as long as legislation for this purpose does not encroach upon the constitutional rights of one rightfully on a street for the purpose of distributing hand bills, the regulation should stand. The liberty of expression is superior to a claim that it could be exercised elsewhere.\(^9\) In *Jamison v. Texas*,\(^10\) another case in this area, the Court struck down a conviction under a municipal ordinance forbidding the distribution of handbills by


\(^{7}\) 307 U.S. 496 (1938).

\(^{8}\) 308 U.S. 147 (1939).

\(^{9}\) *Id.* at 163.

\(^{10}\) 318 U.S. 413, 416 (1939).
saying that the right of a person lawfully on a public street to express his views extends to the communication of ideas by literature as well as the spoken word.

The regulation of solicitation has been the issue in a group of related cases. Here, the interest of government in protecting the public from fraud and from criminals who use solicitation as a device to enter homes is more substantial. However, the state or municipality must exercise caution in this area because legislative motives which could support regulation of other activities may be insufficient where first amendment freedoms are involved. The Supreme Court will not permit the police to exercise too broad a discretionary power. In Cantwell v. Connecticut a state statute requiring a permit for religious solicitation was struck down as allowing too wide an exercise of discretion by the state official. The Court there stated that "because First Amendment freedoms need breathing space to survive, and the threat of sanctions may deter their exercise almost as potently as actual application of sanctions, government may regulate in the area only with narrow specificity." A municipal ordinance controlling solicitation by the exercise of discretion by the mayor was held to be an unconstitutional abridgement of the freedoms of speech, religion and press in Largent v. Texas. Thus, licensing systems must be based on well defined criteria for administrative discretion and must relate to a proper regulation of public places.

Still different considerations arise in the area of control of speeches made on public property and streets. The opposing interests in these instances are protection of the public peace together with recreational and transportation uses for which the public property and streets exist. The states are entitled to protect themselves from the abuse of the privilege of their institutions. On the other hand, free political discussion is deemed

14. Id. at 311.
15. 318 U.S. 418 (1943).
essential to the security of our society and the courts have determined that state regulation can be justified only if it deals with the abuse of the rights of free speech, press or assembly. The rights themselves must not be curtailed by statutes so vague or indefinite as to allow punishment for a fair exercise of this opportunity of expression. The concept of an absolute right to control the use of public parks was rejected in Hague v. OIO. The Court in Hague, however, did not rule out all regulation but confined its holding to the invalidation of arbitrary suppression. It is clear that the Constitution does not deny localities the power to construct a licensing system if the exercise of discretion by the licensing officials is sufficiently confined. The principle that governmental authority may, by reasonable nondiscriminatory regulations, preserve peace, order and tranquility effectively negates any conception that the first amendment freedoms guarantee that everyone with opinions or beliefs to express may gather around him a group of listeners at any place at any time.

On some occasions the Supreme Court's attention has been directed to limitations upon speech and assembly by a sanction imposed after the event. In considering a breach of the peace conviction in Cantwell v. Connecticut, the Court referred to the "clear and present danger test" enunciated in Schenck v. United States. The Court, while concluding that on the facts of the case there was no clear and present danger to public peace and order, recognized that if such a menace did exist the power of the state to prevent or punish would be obvious. In Feiner v. New York a danger to public peace and order was found and a conviction for breach of the peace was upheld. The utterance of "fighting words" by calling a policeman a "damned racketeer" and a "damned Fascist" was deemed sufficient

22. 310 U.S. 296 (1940).
25. Id. at 308.

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grounds upon which to sustain a conviction in *Chaplinsky v. New Hampshire*.27

The Court in *Adderley* gave considerable attention to the case of *Edwards v. South Carolina*.28 The facts in *Edwards* were not greatly dissimilar to those present in *Adderley* and should be examined in some detail. In *Edwards* the petitioners were Negroes convicted for the common law offense of breach of the peace. They had gathered on the South Carolina State Capitol grounds to protest against segregation policies. They were ordered by the police to disperse. Failing to do so, they were subsequently arrested.29 The Supreme Court reversed by holding that the convictions infringed upon the defendants' rights of free speech, free assembly and freedom to petition for redress of grievances.30

The Court in *Edwards* pointed out that the South Carolina Supreme Court itself acknowledged that the charge of breach of the peace was "not susceptible of exact definition" and stated that convictions of an offense so generalized as not to be susceptible of exact definition, such as the common law offense of breach of the peace, infringe upon the right of free speech and assembly.31 It was pointed out that the fourteenth amendment does not permit a state to make criminal the peaceful expression of unpopular views,32 and, under the facts, the petitioners had engaged in no punishable conduct. The Court stated that the petitioners exercised their first amendment rights "in their most pristine and classic form"33 and that the evidence "showed no more than that the opinions which they were expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection.34

Another case which the Court took pains to distinguish from *Adderley* was *Cox v. Louisiana*,35 involving a civil rights leader who had been convicted of breach of the peace under a Louisiana statute. The petitioner had led a demonstration of students

27. 315 U.S. 568 (1942).
29. Id. at 229.
31. Id. at 237.
32. Id.
33. Id. at 235.
34. Id. at 237.
across the street from a court house where fellow students were jailed. The demonstrators failed to disperse on police order, and the petitioner was arrested. The United States Supreme Court reversed the conviction on the grounds that the state statute defining breach of the peace was unconstitutionally broad in scope.36

It would appear that the Supreme Court in Adderley could have continued the trend of elevating the rights of freedom of speech, assembly and petition above the attempted regulations of civil rights demonstrations. Yet, the Court did not avail itself of this opportunity; instead, the Court distinguished Adderley on two grounds. "Traditionally," said the Court, "state capitol grounds are open to the public. Jails, built for security purposes, are not."37 In Edwards, the Court felt that the petitioners had a right to be on the State Capitol grounds and to carry on a peaceful demonstration.38 It would seem that no such right exists in regards to jailhouse grounds.39 The Supreme Court moved to firmer ground when it pointed out that the conviction in Adderley was based on a Florida trespass statute.40 The Court distinguished both Edwards v. South Carolina and Cox v. Louisiana on this basis. The Court stated that the conviction in Adderley could not be attacked on the grounds of vagueness of the statute. The statute "is aimed at conduct of a limited kind, that is for one person or persons to trespass upon the property of another with a malicious and mischievous intent."41 "Nothing in the Constitution of the United States prevents Florida from even-handed enforcement of its general trespass statute against those refusing to obey the sheriff's order to remove themselves from what amounted to the curtilage of the jailhouse."42 The Court rejected the proposition that there is a constitutional right to protest in any manner, at any time and at any place in observing that "[T]he United States Constitution does not forbid a state to control the use of its own property for its own lawful nondiscriminatory purpose."43

40. For text see note 2, supra.
42. Id. at 247.
43. Id.
The decision in *Adderley* is not the departure from precedent that it may appear at first blush. In *Edwards* it was acknowledged that the "even-handed application of a precise and narrowly regulatory statute evincing a legislative judgment that certain specific conduct be limited or proscribed" would have given rise to a different result. The *Cox v. Louisiana* decision contained statements that "limited discretion under properly drawn statutes and ordinances" could be vested in administrative officials if such discretion was "exercised with 'uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination.'" Thus, a sufficiently broad gap was left in which the Court could insert its decision in *Adderley*.

If any stable thread of continuity is to be found running through the cases of this area, it would be that "while the Court has emphasized the importance of 'free speech', it has recognized that 'free speech' is not in itself a touchstone." The Court has not turned its back upon important interests, such as public order, when the interference with free exercise of the freedom of speech and assembly does not outweigh them. When the decisions are analyzed, important questions emerge. What is the interest which requires regulation of speech and assembly? What is the method employed to effect the regulation of speech and assembly? What type of speech and assembly is regulated? Where does the regulated speech and assembly take place? If these questions are kept in mind, the issues come into sharper focus, for it is around these considerations that the cases turn.

H. Edward Smith

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45. *Id.* at 236.
48. *Id.* at 282, 283.
CONSTITUTIONAL LAW—LOYALTY OATHS—KEY SECTIONS OF NEW YORK’S LOYALTY STATUTES DECLARED UNCONSTITUTIONAL*

The appellants, as members of the University of Buffalo faculty, were required by law to sign an oath disclaiming membership in the Communist Party and notifying the president of the state university if they had previously been a member of that party. Each appellant refused to sign the oath and was told such refusal required their dismissal from the university.

The appellants filed suit for declaratory judgment and injunctive relief alleging that the state’s loyalty program violated the first amendment’s guarantee of freedom of speech and assembly. A three-judge federal court found that the program was constitutional.1 Upon consideration of the case, the Supreme Court reversed and found that New York Education Law section 3021 and New York Civil Service Law section 105 (1)a, (1)b and (3), which requires removal of teachers for treasonable or seditious utterances or acts and which apparently ban mere advocacy of abstract doctrine, to be unconstitutionally vague. The Court also ruled invalid New York Civil Service Law section 105 (1)c and New York Education Law section 3022 (2) insofar as they sanction mere knowing membership in the Communist Party of the United States or of the State of New York as grounds for dismissal without any showing of specific intent to further the unlawful aims of those parties.2

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The New York Civil Service Law sections 105 (1)a, (1)b, (1)c and (3) which were declared unconstitutional read as follows:

Subversive activities; disqualification

1. Ineligibility of persons advocating overthrow of government by force or unlawful means. No person shall be appointed to any office or position in the service of the state or of any civil division thereof, nor shall any person employed in any such office or position be continued in such employment, nor shall any person be employed in the public service as superintendent, principal or teacher in a public school or academy or in a state college or any other state educational institution who:

(a) by word of mouth or writing wilfully and deliberately advocates, advises, or teaches the doctrine that the government of the United States or of any state or of any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means; or

(b) prints, publishes, edits, issues, or sells any book, paper, document or written or printed matter in any form containing or advocating, advising or teaching the doctrine that the government of the United States or of
Loyalty oaths of some type have become an increasing problem in many facets of American life. One writer in this area, claiming to have made a conservative estimate, states that in 1958 at least one out of five persons in the total labor force had taken a test oath, or completed a loyalty statement, or achieved official security clearance or survived some undefined private scrutiny as a condition of his employment. This statistic represents

any state or of any political subdivision thereof should be overthrown by force, violence or any unlawful means, and who advocates, advises, teaches or embraces the duty, necessity or propriety of adopting the doctrine contained therein; or

(c) organizes or helps to organize or become a member of any society or group of persons which teaches or advocates that the government of the United States or of any state or of any political subdivision thereof shall be overthrown by force or violence or by any unlawful means.

For the purposes of this section, membership in the communist party of the United States of America or the communist party of the state of New York shall constitute prima facie evidence of disqualification for appointment to or retention in any office or position in the service of the state or of any city or civil division thereof.

(3) Removal for treasonable or seditious acts or utterances. A person in the civil service of the state or of any civil division thereof shall be removable therefrom for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts while holding such position. For the purpose of this subdivision, a treasonable word or act shall mean "treason", as defined in the penal law; a seditious word or act shall mean "criminal anarchy" as defined in the penal law.

New York Education Law section 3021 reads as follows:

Removal of superintendents, teachers and employees for treasonable or seditious acts or utterances.

A person employed as superintendent of schools, teacher or employee in the public schools, in any city or school district of the state, shall be removed from such position for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts while holding such position.

New York Education Law section 3022 (2) reads as follows:

2. The board of regents shall, after inquiry, and after such notice and hearings as may be appropriate, make a listing of organizations which it finds to be subversive in that they advocate, advise, teach or embrace the doctrine that the government of the United States or of any state or of any political subdivision thereof shall be overthrown or overturned by force, violence or any unlawful means, or that they advocate, advise, teach or embrace the duty, necessity or propriety of adopting any such doctrine, as set forth in section twelve-a (now section 105) of the civil service law. Such listings may be amended and revised from time to time. The board, in making such inquiry, may utilize any similar listings or designations promulgated by any federal agency or authority authorized by federal law, regulation or executive order, and for the purposes of such inquiry, the board may request and receive from such federal agencies or authorities any supporting material or evidence that may be made available to it. The board of regents shall provide in the rules and regulations required by subdivision one hereof that membership in any such organization included in a list shall constitute prima facie evidence of disqualification for appointment to or retention in any office or position in the public schools of the state.

persons in both private and governmental positions including the military.⁴ Although, as the foregoing demonstrates, this is a problem of wide dimensions, the present discussion of loyalty oaths will be mainly concerned with the teaching profession.

The loyalty oath is not a new creature in America. Oddly enough, one of the earliest cases in this area to reach the Supreme Court involved a teacher. In Cummings v. Missouri,⁵ an 1867 case, a Catholic priest was convicted for teaching and preaching without having ascribed to the state’s oath which sought to punish those who had been in sympathy with the South during the Civil War. The Supreme Court reversed the conviction declaring the oath unconstitutional in that it operated ex post facto and as a bill of attainder.

The above is illustrative of the fact that the three wars of extensive American involvement, the Civil War, World War I and World War II have all spawned various loyalty programs to ferret out those “disloyal” to the United States.⁶ However, the starting point of large scale programs was 1947, when President Truman issued his loyalty order to federal employees.⁷ For the last twenty years, the impetus given by that order has led to the wide spread use of loyalty programs. The Communist Party with its attempted infiltration into all levels of our national life is the reason for this continued growth. The height of the reaction to this suspected infiltration came in the 1950’s with Senator McCarthy’s hearings and the case of Dennis v. United States⁸ with its extensive publicity. The events of the 50’s are like the proverbial pebble cast upon calm waters. The effects of those days are still rippling through our lives and remain a phenomenon of the Cold War.

The most notable aspect of the Dennis case was that it declared the Smith Act⁹ constitutional. The Court gave various reasons for its interpretation of the act, but perhaps the real reason for the Court’s refusal to find the act unconstitutional can be found in the following statement:

⁴ R. Brown, supra note 3, at 181.
⁵ 71 U. S. (4 Wall.) 277 (1867).
⁶ R. Brown, supra note 3, at 3. For a history of one state’s loyalty-security legislation, see Chamberlain, Loyalty and Legislative Action (1951), which deals with New York’s attempts in this area.
⁷ R. Brown, supra note 3, at 3.
⁸ 341 U.S. 491 (1951).
The formation by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in other countries, and with whom these petitioners were in the very least ideologically attuned, convince us that these convictions were justified. ...  

The Court viewed the Smith Act as a manifestation of Congress’ intent to punish what it considered subversive activities. This view is strengthened by Mr. Justice Jackson’s statement: “It requires us to reappraise, in the light of our times and conditions, constitutional doctrines devised under other circumstances to strike a balance between authority and liberty.” The Court, however, did limit the Dennis holding by requiring strict evidence to sustain a conviction under the Smith Act.

It should be noted at this point that the states can no longer criminally convict persons for subversive activities. In Pennsylvania v. Nelson, the Court stated:

We examine these acts only to determine the Congressional plan. Looking to all of them in the aggregate, the conclusion is inescapable that Congress has intended to occupy the field of sedition. Taken as a whole, they evince a Congressional plan which makes it reasonable to determine that no room has been left for the States to supplement it. Therefore, a state sedition statute is superseded regardless of whether it purports to supplement the federal law.

At the time of the Nelson decision forty-two states, Alaska and Hawaii had statutes which penalized the advocacy of violent overthrow of government.

11. Id. at 561 (concurring opinion).
12. See, e.g., Noto v. United States, 367 U.S. 290 (1961); Yates v. United States, 354 U.S. 298 (1957); Scales v. United States, 367 U.S. 203 (1961). The first two cases are examples of insufficiency of evidence to sustain convictions under the Smith Act, while the last case did have a sufficiency of evidence.
14. Id. at 504. As to whether or not dismissal constitutes punishment, consider the case of a college professor barred from his profession and having to seek employment where one’s past is not considered. To be permanently ousted from one’s chosen profession would be worse than a prison sentence to many.
15. Id. at 514 n.4.
Although the states can no longer convict persons for subversive activity, the Court, by its decision in *Adler v. Board of Education*,16 sanctioned a form of punishment by allowing the states to dismiss those persons suspected of subversive activities from public employment. It is interesting to note that some of the provisions of the New York loyalty program declared constitutional in *Adler* were found to be unconstitutional in *Keyishian v. Board of Regents*.17 Held to be constitutional in *Adler* were New York Civil Service Law section 12-a (now section 105) and New York Education Law section 3022.18 These latter sections were declared to be unconstitutional in *Keyishian* on the grounds of vagueness. In so ruling, the Court observed that it had refused to consider the vagueness question in *Adler* because the challenge had not been made in the pleadings or in the proceedings in the lower courts. The sole vagueness contention in *Adler* concerned the word “subversive,” appearing in the preamble to and caption of New York Education Law section 3022.19

In addition to declaring constitutional the New York loyalty program as applied to teachers, the *Adler* Court stated:

It is clear that such persons have the right under our law to assemble, speak, think and believe as they will. It is equally clear that they have no right to work for the State in the school system on their own terms. They may work for the school system upon reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere. Has the state thus deprived them of any right of free speech or assembly? We think not.20

Rejecting this position, the Court, in *Keyishian*, observed, “(The) constitutional doctrine which has emerged since that decision has rejected its major premise.”21 The Court further stated,

17. 87 S. Ct. 675, 679 (1967).
18. For text, see note 2, supra.
However, the Court of Appeals for the Second Circuit correctly said in an earlier stage in the case, . . . the theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected. Indeed, that theory was expressly rejected in a series of decisions following Adler. In *Sherbert v. Verner*, 374 U.S. 398, 404 (1963), we said: "It is too late in the day to doubt that the liberties of religion and expression may be infringed upon by the denial of or placing of conditions upon a benefit or privilege."22

In examining the constitutionality of the provisions of the New York program barring employment by reason of membership in a listed organization,23 the Court again relied on an emerging constitutional doctrine to strike them down. The Court stated, "Mere knowing membership without a specific intent to further the unlawful aims of an organization is not a constitutionally adequate basis for exclusion from such positions as those held by appellants."24 The reasoning behind this doctrine can be found in *Elfbra’ndt v. Russell*25 where the Court struck down Arizona's loyalty oath when challenged by a teacher. There the Court stated:

Those who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities surely pose no threat either as citizens or as public employees. Laws such as this which are not restricted in scope to those who join with the "specific intent" to further illegal action impose, in effect, a conclusive presumption that the member shares the unlawful aims of the organization.26

The proposition laid down by the Court with these decisions is that there are *good* Communists and *bad* Communists. It appears that a good Communist is one who is seeking to foster the "revolution" in the United States through peaceful means—namely, one who uses the party as a political entity divorced from any subversive activities and who wages war at the polls.

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22. *Id.* at 685 (citations omitted).
23. N. Y. Civ. Law § 105 (1)c.
24. 87 S. Ct. 675, 685 (1967).
26. *Id.* at 1241.
On the other hand, the bad Communist is one who has the "specific intent" to overthrow the government by force, violence or some similarly illegal means. It further seems that a Communist of the former tenets cannot be barred from public employment or any other right any more than a member of another political party as long as his political beliefs do not affect his work. For example, a good Communist should be allowed to teach so long as his personal beliefs are not espoused in the classroom.

Another inescapable conclusion wrought by these decisions is that loyalty oaths as such are now completely ineffectual. They must be narrowly drawn so as to punish or bar only persons who have the personal criminal purpose to overthrow the government by force or violence. With an oath so drawn, everyone would sign it whether they had the requisite intent or not. As Mr. Justice Douglas said in the Elsbran dt case, "The communist trained in fraud and perjury has no qualms in taking any oath."27 If anyone did refuse to sign because the oath applied to him, he would not only be barred from some activity but would bring himself within the sphere of the Smith Act and its possible punishment of a 20,000 dollars fine or twenty years in prison or both.28

This is not to suggest that government cannot continue to try to protect itself from persons bent on subversive activities. The Court in Dennis v. United States29 stated,

"We reject any principle of governmental helplessness in the face of preparation for revolution, which principle, carried to its logical conclusion, must lead to anarchy. No one could conceive that it's not within the power of Congress to prohibit acts intended to overthrow the government by force and violence."30

The status of loyalty oaths is now similar to that of confessions. Namely, those who would seek to convict a person for violation of the Smith Act or to bar him from public employment must rely on investigatory techniques coupled with strict evidentiary material in order to achieve their aims.

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27. Id. at 1242.
30. Id. at 501.
LABOR LAW—APPROPRIATE BARGAINING UNIT—ALL RELEVANT FACTORS WILL BE EXAMINED IN DETERMINING WHETHER A CRAFT SHALL BE SEVERED*

The National Labor Relations Board’s new policy on craft severance as set out in Mallinckrodt Chemical Works\(^1\) marks a significant change from the standard previously established in American Potash and Chemical Corporation.\(^2\) Mallinckrodt Chemical Works is involved in the production of uranium under a contract with the Atomic Energy Commission. Among the plant workers were twelve instrument mechanics whom the International Brotherhood of Electrical Workers sought to represent. In the past these workers had been part of a larger unit represented by the Independent Union of Atomic Workers. In dismissing the IBEW’s petition the Board refused to base its determination on the Potash standard which would have required that the IBEW have traditionally represented instrument mechanics. The Board instead weighed all relevant factors, such as the integration of the production process, the bargaining history of the larger unit, as well as the fact that the IBEW had not traditionally represented instrument workers. The Board also said they would apply the same standards on a case-by-case basis to all petitions for severance of craft units regardless of the industry involved.\(^3\) In order to appreciate fully the significance of the Mallinckrodt case a brief review of past decisions in this area is necessary.

In 1937 the Board announced its Globe\(^4\) doctrine as an attempt to resolve controversies between craft and industrial units. Under the doctrine announced in that case, craft employees were permitted to decide whether they wanted separate representation or wished to be included in a plant-wide unit. After the “Globe election” the Board was to determine the unit in accordance with the wishes of the craft employees.

\(^*\) Mallinckrodt Chemical Works, 64 L.R.R.M. 1011 (1966).

1. 64 L.R.R.M. 1011 (1966).
The Globe decision was soon criticized as one which disregarded the interests of the majority and magnified the risk of strikes by allowing a large increase in the number of separately represented units within a plant. The Board's determination was not to remain as such for long. During the next few years exceptions were made for pattern makers, brick layers, electricians and engineers. These exceptions led to the craft "identity" doctrine laid down in the General Electric case.

This new policy required that the group show itself to be a true craft, that it had maintained its identity as a craft group and that it had protested inclusion in the larger unit. Exceptions were made for the crafts not in existence when the previous determinations were made.

The uncertainty and dissention which stemmed from American Can and the cases which followed were largely responsible for the passage of section 9(b)(2) of the National Labor Relations Act which provides:

[The board shall not . . . decide that any craft unit is inappropriate . . . on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation.]

The meaning of this section was questioned in the National Tube case in which it was contended that the section removed from the Board's discretion not only the power to rely upon "a

8. Aluminum Co. of America, 42 N.L.R.B. 772 (1942).
12. Id.
15. 76 N.L.R.B. 1199 (1948).
prior Board determination" in order to find a proposed craft unit inappropriate, but also the power to find a craft unit inappropriate because of any collective bargaining history or of any other circumstance upon which determinations have customarily been based. The Board rejected this contention concluding "that bargaining history in an industry may be considered as a weighty factor. . . ." The Board then demonstrated its intent to consider "other circumstances" by refusing severance to bricklayers in the steel industry because of the integrated nature of the operations in that industry. This *National Tube* doctrine, which denied severance within the steel industry, soon came to include the lumber, wet milling and aluminum industries.

By 1953 the more important criteria which the Board developed in determining craft severance issues were:

(1) The employer's history of bargaining.

(2) The history, extent and type of organization of employees in other plants of the employer and of other employees in the same industry.

(3) The relationship between the proposed unit and the employer's method of managing and operating the plant, as for example, the extent to which the plant's operations were integrated.

(4) The maintenance by the group seeking separate representation of identity as a craft throughout the period of bargaining on a more comprehensive basis, as illustrated by such things as: (a) protesting inclusion in the broader unit; (b) seeking to obtain recognition from the employer as a separate unit; and (c) refraining from participation in the activities of the union representing the broader unit.

But in 1954 the Board decided the *American Potash and Chemical Corporation* case holding that, with the exception of the

16. *Id.* at 1205, 1206.
“National Tube industries”, craft unit severance would be permitted if the employees involved constituted a true craft or departmental group and if the union seeking to represent the employees traditionally concerned itself with the problems of the group involved. This, in effect, reversed the National Tube decision with regard to the construction of section 9(b)(2) and the denial of craft severance on the basis of integrated production processes in an industry where the prevailing pattern of bargaining is industrial in nature.

In Potash the Board limited its discretion by making the test for determining the appropriate bargaining unit a more mechanical one. This, in a sense, is violative of section 9(b) which requires a determination by the Board “in each case.” Another fault in the Potash decision was demonstrated in NLRB v. Pittsburgh Plate Glass Co. where the court felt it unreasonable to discriminate between the four “National Tube industries” and the plate glass industry when the same type of integration of operations and long history of bargaining existed in both. This decision did not, however, cause the Board to change its position, and the Potash standard was still applied.

The Mallinckrodt case represents a major change in the policy used by the Board when considering requests for separation of craft employees from other plant workers for collective bargaining purposes. The change can be attributed to dissatisfaction with the Potash policy. It was felt that this policy gave overriding importance, first, to its requirement that a unit, in order to be severed, be composed of true craft employees and, second, to the stringent “traditional representative” requirement. The Board overruled Potash to the extent that it foreclosed inquiry into all relevant factors and to the extent that it limited consideration of bargaining history and integration of operations to the “National Tube” industries. The majority made its determination after a review of the legislative history of section

22. The so-called National Tube industries are steel, aluminum, wet milling and lumber.
24. 270 F.2d 167 (4th Cir. 1959).
9(b)(2) and in accord with the *Pittsburgh Plate Glass* case which had previously refused to allow exceptional treatment to the four "National Tube" industries.

The Board's purpose in *Mallinckrodt* was to broaden its inquiry so as to permit evaluation of all factors relevant to informed decisions in the area. Some of the "areas of inquiry" which the majority deemed relevant are:

1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.

2. The history of collective bargaining of the employees sought at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.

3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of exclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.

4. The history and pattern of collective bargaining in the industry involved.

5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon

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27. The Board looked at the intentions of Congress when section 9(b)(2) was enacted. They felt that history indicated this section was enacted out of concern that the *American Can* doctrine unduly restricted craft employees seeking separate representation. The majority weighed heavily Senate Report No. 105 on S. 1126, in which Senator Taft said in part: "Our bill still leaves to the Board discretion to review all the facts in determining the appropriate unit." 1 Leg. Hist. 417 (emphasis added).

28. 270 F.2d 167 (4th Cir. 1959).
the performance of the assigned functions of the employees in the proposed unit.

6. The qualifications of the unit seeking to 'carve out' a separate unit, including that union's experience in representing employees like those involved in the severance action.29

Mallinckrodt Chemical Works, Uranium Division, manufactures uranium metal under a contract with the Atomic Energy Commission. Of the 560 plant employees a group of 280 production and maintenance employees are represented by the Independent Union of Atomic Workers. Among these workers are twelve instrument mechanics whom Local 1 of the International Brotherhood of Electrical Workers sought to sever from the overall unit. The IBEW contended that it was entitled to a craft severance election because it had met the American Potash requirements. The majority concluded that the IBEW did not satisfy the Potash test in that it had not established itself as a traditional representative of instrument mechanics. The Board stated, however, that this in itself was not a decisive ground on which to refuse severance.

It is interesting to note that the result in Mallinckrodt would have been the same had the Board continued to apply the Potash standard, but in Mallinckrodt the fact that the IBEW failed to qualify as a traditional representative was but one of the factors weighed by the Board. In refusing severance, the Board also considered (1) the highly integrated production process of the plant, and the intimate relation of the instrument mechanics to this process, (2) the successful bargaining history of the larger unit, and (3) its seniority system for transfers, layoffs and recalls. While the Board recognized that the instrument mechanics may be a group of skilled journeymen who might be otherwise permitted to sever from a larger bargaining unit, they felt that "[T]he separate community of interests which these employees enjoy by reasons of their skills and training has been largely submerged in the broader community of interests which they share with other employees. . . ."30 The Board, therefore, dismissed the IBEW's petition.31

30. Id. at 1017.
Board member Fanning, in his dissenting opinion, agreed that a review of craft severance policies was necessary but felt Congress had intended that the same tests be applied to severance cases as to non-severance cases. He joined with the majority in modifying Potash to the extent that it had foreclosed consideration of all relevant factors in cases arising outside of the “National Tube” industries, and in overruling the National Tube decision to the extent that it foreclosed separate craft representation. He felt there were many factors which indicated that a separate unit was appropriate and that the majority gave too much weight to the bargaining history of the plant.32

On the same day that Mallinckrodt was decided, the Board was able to apply its new test in Holmberg, Inc.33 In this case a petition was filed to sever tool and die workers from a larger unit which was represented by the IBEW. The Board, in refusing to permit severance, pointed out: (1) the tool and die workers clearly shared a substantial community of interests with the employees in the larger unit; (2) although the workers possessed special skills, their work was not confined to tasks requiring the exercise of such skills; and (3) the tasks of the workers were an integral part of the production process in which the larger unit was engaged. In reaching its conclusion, the Board considered these factors but seemed to put the most weight on the successful bargaining history of the larger unit and the fact that the tool and die workers were the highest paid group in the plant. In his dissent, Member Fanning, once again objected to the controlling weight given to the length of the plant’s bargaining history.34

In E. I. DuPont de Nemours and Co.,35 also handed down on the same day as Mallinckrodt, the Board ordered that the electricians, in whose behalf the IBEW was petitioning, hold an election to determine whether there would be a craft severance. The Board recognized the high degree of integration of the production process but felt that this in itself should not bar separate representation of the electricians. The Board relied to some extent on the specialization of the electricians and on the lengthy

32. Id. at 1017 (dissenting opinion).
33. 64 L.R.R.M. 1025 (1966).
34. Id. at 1027 (dissenting opinion).
35. 64 L.R.R.M. 1021 (1966).
training period through which they must go, and felt this should allow them to retain their separate identity. But probably most important, the Board, in granting the petition, noted that there had been no history of bargaining at the plant. Member Fanning concurred with the majority except to the extent that it relied on the absence of bargaining history in finding the unit appropriate.36

Now that the Board has thrown out the mechanical test of Potash and announced that it will exercise discretion in considering all relevant factors in each case, it will be interesting to see just how the Board will use its discretion in the future. It appears that, thus far, the most important factor will be the bargaining history of the plant. If Member Fanning's observations are correct, it is not only the most important but also the controlling factor. If the success and length of bargaining history is given controlling weight, the Board may preclude themselves from considering other relevant factors. Will this factor be given so much weight so as to, in effect, make the test mechanical once again?

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36. Id. at 1025 (concurring opinion).
LEGAL SERVICES FOR THE INDIGENT—THE FEASIBILITY OF USING CORPORATIONS FUNDED BY FEDERAL APPROPRIATIONS

"The Economic Opportunity Act and its provisions for the Legal Services Program is perhaps the most important evidence that the law is again coming alive as a living process responsive to the changing human needs.”1 But the advent of federal intervention into the realm of legal assistance for the indigent has presented judicial quandaries for the administration and organization of these services. Recently, an organizational proposal came before the New York Supreme Court, Appellate Division, in the form of applications for the corporate practice of law to be funded by the Office of Economic Opportunity. The court, through Judge Breitel, denied the proposal without prejudice on the grounds of substantial deviation from legal policy and ethics, and indefiniteness.

New York law prescribes that the only corporation which shall be allowed to engage in the practice of law is one “organized for benevolent or charitable purposes approved by the appellate division of the supreme court. . . .”2 In denying approval of the proposals, the appellate division set forth guidelines by which the applications could be approved.

The applications came before the court from the Community Action for Legal Services, Inc. (CALS), the New York Legal Assistance Corporation (NYLAC), and the Harlem Assertion of Rights, Inc. (HAR). As a whole, they sought approval for the establishment of neighborhood law offices which were to provide legal services and education for the financially disadvantaged and for the disfavored minorities through the use of federal funds from the Office of Economic Opportunity.

CALS was not to practice law, but was to be a financial delegate agency of a community organization and was primarily to oversee, control and direct the finances to the subsidiary corporations which would practice law. CALS’ board of directors


was to have had the power to establish guidelines for the operation of legal service programs of CALS' delegate agencies, to insure concurrence with these guidelines, to create training programs for the lawyers and lay personnel of these delegate agencies, and to conduct audits. Although a majority of the board members were to have been attorneys, more than one third of the members were to have come from various poverty area committees in New York City.

NYLAC, proposed to be the principle delegate of CALS, was to have had the power to operate its own neighborhood offices and to contract with other agencies and organizations for the provision of legal services. NYLAC's board of directors was to have consisted of thirteen attorneys and seven representatives of the poor, one representative to have been recommended by the appropriate community agency in each of the seven areas where NYLAC was to have set up offices. CALS was to administer the funds; and initially the operation of the seven neighborhood offices would be left to the discretion of NYLAC, another delegate agency, or an existing legal aid society. In other words, the creation of NYLAC would not bar each area from establishing its own offices with CALS, through NYLAC, furnishing the funds and assistance.

HAR was proposed for the establishment and maintenance of five neighborhood offices in Harlem under the auspices of CALS and NYLAC, each of these offices to render services ranging from legal advocacy to community legal education on the rights of the accused. Initially, legal services were to have been limited to those completely unable to hire private counsel. Standards would be broadened. The board of directors of HAR was to have been made up of fifteen members, only six of which were to have been attorneys. "Plainly enough the office of Economic Opportunity guidelines were framed to put the lawyer in the driver's seat. The guidelines assure that professional judgment shall be free not only from local pressures but also from Washington pressures."

The proposals were denied because the organizational plan would have resulted in lay control over the practice of law, necessarily accompanied by diminished court control over legal practice. The complex interrelationships would doubtlessly have led

to an uncontrollable pyramiding of sub-delegation, making probable the co-existence of anti-poverty neighborhood law offices in the same areas under different sponsors. Although not judicially concerned with the waste which would naturally result from the duplication and competition when more than one office is placed in a single area, the court is vitally interested in the control of these legal entities which could never be effective within the proposed organizational maze, even if the non-attorney controls were completely eliminated.

The most fundamental change suggested by the court was the use of one licensed corporation which would distribute all federal funds in an area. All delegate agencies would thereby be responsible to only one directorate, and the court could effectively reach the one directorate to assure the maintenance of the ethical and disciplinary standards indispensable to the legal profession.

The federal agency would furnish the money and the audit, and the one corporation would disperse the funds among the various offices in the needy districts of New York; and therefore, the intricate complexity is not necessary because one corporation could serve as a buffer or insulator between the source of the funds and the practice of law, delegating the work to such subsidiaries as it deems necessary.\(^4\)

The proposals, therefore, were completely unworkable because of the "clumsy overlapping, excessive layers of organizations and built-in incentives to competitive anti-poverty law offices operating in the same area."\(^5\)

Although the application for a charter to form a charitable corporation is generally ex parte and granted pro forma, a Pennsylvania court, several months prior to the applications submitted to the New York Appellate Division, approved the application for charter by the Community Legal Services, Inc. (CLS) over strong objection by the practicing lawyers of Philadelphia.\(^6\) With the exception of the problem of organizational complexity which faced the New York court, the objec-

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tions to the approval of the CLS charter were similar to those thrust upon the New York Appellate Division; and a contrast and comparison of how the courts handled the analogous problems will shed some light on the judicial theories which are evolving in this, the genesis of a necessary addition to the legal profession.

The primary corporate purpose of CLS as stated in its application for charter was to "provide legal aid assistance" to those "who appear worthy thereof but by reason of poverty lack the wherewithal to procure the same." 7 The court, realizing that the decision could have important implications for Philadelphia and the nation as to Legal Services Programs, approved the applications pursuant to the Pennsylvania Non-profit Corporation law under which the purpose must be "lawful and not injurious to the community." 8 CLS' board of directors includes six members of the Philadelphia Bar, two members each from the Legal Aid Society and Defender Association, one member from the law schools on a rotating basis, the chairman of the Civil Rights Committee and the Public Service Committee, and seven representatives of the poor communities selected by the Community Action Councils in the areas served by CLS. Each neighborhood office is staffed by full-time attorneys; and the non-profit corporation provides educational programs through local law schools and universities which educate the poor in the basic civil rights of every citizen, giving the poor members of the community stature even though their economic status remains the same.

The objections to the application for charter voiced by the practicing attorneys of Philadelphia included undue control of a local program by federal agencies, diminished income to the lawyers who now handle many prospective CLS clients, improper restraint on the indigent's ability to select counsel independently, indefinite standards of indigency, representation of the poor on the board of directors and possible violations of the Canons of Professional Ethics. Each of these objections will be disposed of by comparing the Pennsylvania court's discussion to that of the New York court on similar problems.

7. Id.
8. Id. at 3.
The Pennsylvania court did not concern itself with the possibility of lay control of the legal practice because the organizational proposal before it was not complex and interrelated; and it did not find any evil in the federal government’s exercise of control over local programs which it financially supports. Asserting that the only federal control would be to assure compliance with federal statutes and regulations, the court stated that such control would be welcome in weeding out the type programs which had been unsatisfactory in other localities. The New York view, on the other hand, was that there should be an insulating entity, CALS, between the financial support and the practice of law; and it was suggested that audit control be left directly to the federal agency and the corporate entity, provided that the corporation’s participation in the audit never involved any control over the practice of law. The New York court was also faced with the probability of ultimate lay control over the practicing lawyers in the corporate womb. Lay control over legal practice is considered violative of public policy because the public is entitled to be protected by the court’s ultimate control over those who practice law. This policy is of primary concern to the court in order that it maintain summary and direct control over professional and ethical standards required by the New York Code which limits the practice of law solely to licensed professionals.9 In other words, the court saw a need for diverse representation in the requirements of the federal agency for community involvement, but suggested that these needs be met in councils or other policy groups and not in a lay-controlled board of directors or office management. The court must be able to supervise those whom it sanctions; and in the event that professional standards are violated, large directorates would only bring a diffusion and delegation of managerial duties which would make ineffective any attempt of discipline by the court. Judge Breitel stated that attorneys need not sponsor legal assistance corporations for them to be created; but once such corporations come into being, the attorney and his profession must be severed from those who are not attorneys. There must be a complete separation of laymen and lawyers, particularly in the hiring and fiscal functions which should be vested exclusively in the attorneys.

The argument that CLS would deplete a substantial number of practicing lawyers' incomes was disposed of by the court's reference to the fact that a very substantial majority of the poor utilize no private attorneys, and therefore would never get legal aid if the practicing attorneys waited for the poor to contact them. Generally, the poor have little or no knowledge of their rights and are distrustful of attorneys. Granted, some retain counsel; but when it means depriving the family of necessities, few attorneys do or desire to build their practices on such retainers. This point was not raised by the New York court because of the fact that the proceeding there was ex parte.

Another point which the Appellate Division of the New York Supreme Court did not raise was that of the indigents' right to choose their own counsel independently. The Pennsylvania court rejected this argument by emphasizing that this right means little to one who has no money to spend for legal aid, and who probably would not know how to exercise it even if he knew he had it. The indigent need lawyers in their own neighborhoods since most never venture from their ghettos, especially in search of legal aid from those whom they fear and distrust.

The objectors to the Philadelphia application called the standards of indigency improper; but the court rebutted the accusation with the proposal that the standards of indigency which merit legal assistance should be a matter of continuing study by the Bar Association so that a flexible standard can be arrived at which will fluctuate with the economic situation in the Philadelphia community. The New York court, however, found that CALS, the parent corporation, had set down nebulous and ill-defined guidelines for the operation of neighborhood law offices; and the proposals, as submitted, would have allowed the corporate subsidiaries to represent groups and minorities without providing the standards which individuals from these groups or minorities must meet to be eligible for legal assistance. In addition, the use of a referral system in the Harlem districts and a lack of definite standards of eligibility are harmful in that

New York has its Puerto Rican and Negro Minorities which would be served by these legal services; and one minority would not trust another minority to handle their work, and, therefore, there are legal standards which are necessary to
prevent others than these minorities in their special sections from getting this legal aid.\textsuperscript{10}

The representation of the poor on the CLS board of directors is in keeping with the congressional mandate calling for the participation by the poor in the OEO programs with the overall direction of the program by the Bar; and thus, the objection to the seven representatives on the CLS board of directors was overcome. The poor should have a voice in what is being done for them, since not all the questions which are put before the board are purely legal. The poor will be indispensable in setting up the best ways to educate the indigent and the best places to set up neighborhood offices since the poor, in these fields, have vital interests and can give invaluable insight to the problems. In other words, the Pennsylvania court is a proponent of doing with the poor, not only to and for them.

Consideration of the Canons of Professional Ethics was a pre-dominant factor in both the Pennsylvania and New York courts.

Canon 27 makes it "unprofessional to solicit professional employment" by any means; however, an exception has been made where free legal services are provided to indigents whose constitutional rights have allegedly been violated.\textsuperscript{11} Bar Associations with legal clinics and referral services have been allowed to publish material to make the public aware of legal services so long as it is done in good faith.\textsuperscript{12} Such publications are not to inure to the benefit of the attorneys but the public at large.

Canon 28 forbids "a lawyer to volunteer advice to bring a lawsuit" or to secure clients in such a manner or to use agents or runners for the same purpose; and although private lawyers would be prohibited from inviting clients to use their services, any Community Legal Services Program must contemplate the possibility that attorneys in the program will give lectures to indigent groups on their legal rights and the availability of free services, and may even invite them to use these free services. New insight to the limits of Canon 28 were established by the

\textsuperscript{10} Telephone interview with Judge Breitel, New York Supreme Court, Appellate Division, Feb. 1967.

\textsuperscript{11} Committee on Professional Ethics and Grievances, Opinion No. 148, (Nov. 16, 1935).

\textsuperscript{12} Committee on Professional Ethics and Grievances, Opinion No. 205, (Nov. 23, 1960).
United States Supreme Court in *NAACP v. Button*\(^{13}\) where the NAACP, to eliminate legal barriers to segregation, actively solicited potential plaintiffs to designate NAACP lawyers to represent them in actions, all costs borne by the NAACP. The Supreme Court reversed the Virginia court and held that these practices are permissible under the first and fourteenth amendments as to freedom of association and expression. The prohibition of Canon 28 was "a lawyer to attempt to reap gain";\(^{14}\) but here

\[\text{[N]}\text{no monetary stakes are involved, and so there is no danger that the attorney will desert or subvert the paramount interests of his client to enrich himself or an outside sponsor . . . .}^{16}\] Laymen cannot be expected to know how to protect their rights and for them to associate together to preserve and enforce rights granted them under Federal laws cannot be condemned as a threat to legal ethics.\(^{16}\)

Canon 35 states that "the professional services of a lawyer should not be controlled or exploited by any lay agency which intervenes between client and lawyer," especially excluding "charitable societies rendering aid to the indigent" but "Legal Aid and Defender Associations have never been considered by the Bar as within the class of prohibited lay intermediaries."\(^{17}\)

Canons 27 and 35, not covered by any Supreme Court decision, "require revision to reflect the realities of the day to day problems" facing the poverty attorneys.\(^{18}\) A committee of the American Bar Association has undertaken this task because of the growing movement to extend legal services to the poor.\(^{19}\)

The New York court read the Canons more restrictively than did the Pennsylvania court, especially in regard to the relatively unrestricted use of laymen as investigators or runners for the neighborhood offices. Standards and control devices are of paramount importance where the outside lay employees are

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15. Id. at 443.
involved, since there is a danger to the public in the unrestricted use of these investigators, but the New York court mentioned the existence of total prohibition in the Canons.

The neighborhood law offices have been analogized to the retail sale of goods; for without these offices, inflation in justice arises by keeping the legal profession out of the reach of the consumer and, therefore, injustice is done to the poor man. Justice under the law must be a product for mass consumption, and the difficulties go to deficiencies in the legal system itself.\textsuperscript{21} There must be established mechanisms for settling disputes in the form of neighborhood court systems which would decentralize and delegate certain functions to local courts so as to relieve overcrowded downtown courts.\textsuperscript{22}

Recently a summary judgment upheld another OEO program against contentions by the Texas Society of Practicing Lawyers that the legal services program was a violation of Canon 28 which prohibits the solicitation of business.\textsuperscript{23} The Superior Court of California denied the request of a County Bar Association to enjoin the operation of the California Rural Legal Assistance Program since the Bar Association failed to show irreparable harm.\textsuperscript{24} The California approval came despite the fact that no California cases expressly approved legal services for the poor by non-profit corporations because of the fact that it was "probable that if the question were presented, the Appellate courts will say this is lawful, subject to reasonable controls designed to protect the public."\textsuperscript{25}

Despite the approvals of Legal Assistance Corporations funded by the OEO, the proposals which came before the Appellate Division of the New York Supreme Court had to be denied because they indiscriminately intermingled social goals with the legitimate practice of law and presented a danger to the general principle of public protection. Social goals and legal practice are two interests which should be separated and pre-


\textsuperscript{22} See, A. Pye, \textit{The Role of Legal Services in the Antipoverty Program}, 31 Law \\& CONTEMP. PROP. 211, 231-49 (1966).


\textsuperscript{24} \textit{Law in Action}, Vol. 2, No. 1, Mar. 1967.

\textsuperscript{25} \textit{Id.}
cisely defined, especially in regard to the vaguely suggested sub-programs providing for the education of the minorities as to their inherent rights as United States citizens. The courts do not wish to become involved in the actual management or selection of those who would shoulder the responsibilities of the management, but merely want to assure public safety. Through a separation of social interests and legal standards, the court's role can be preserved to consider and pass independently upon the conduct of corporations engaged in the practice of law. The federal aid programs are young and may be self-assured; but with the possible dangers of mistakes, abuse, and the ever-fluctuating federal policies and financial support, any authority granted by the court for the practice of law, according to the New York court, should be limited in time.

But for the indefinite and complex proposals, the appellate division would have approved the applications. The court conceded that the social programs were important and must operate alongside the traditional legal aid societies. The court still requires, however, that public protection be paramount, even if "factional, political and narrow interests be subordinated or ignored" when in conflict with the duty of the court to assure the public stable recourse to the court if and when legal standards or ethics are violated. The policy of protecting the people is still the underlying principle upon which the judicial system was established, even though "[T]he Economic Opportunity Act and its provisions for the Legal Services Program is perhaps the most important evidence that the law is again coming alive as a living process responsive to the changing human needs."

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